

# **EXHIBIT 2**

**FILED**

NOV - 5 2015  
CAROLINE M. WEAVER  
DELAWARE CO. COURT CLERK

**IN THE DISTRICT COURT OF DELAWARE COUNTY  
STATE OF OKLAHOMA**

**JULIE KIER,**

**Plaintiff,**

**vs.**

**Case No. CJ-13-200**

**ROSEANN C. LOWERY,**

**an individual, and**

**PROGRESSIVE INSURANCE COMAPANY,**

**A foreign Insurance Company,**

**Defendants.**

**PETITION**

COMES NOW the above named Plaintiff, JULIE KIER, individually, by and through the undersigned attorney, CHARLES J. BRACKNEY, and for her PETITION and causes of action against the above named and referenced Defendant, ROSEANN LOWERY, an individual, and PROGRESSIVE INSURANCE COMAPANY, avers and states as follows

1. That at all times material hereto, the Plaintiff JULIE KIER, an individual (hereinafter referred to as, "KIER," or "PLAINTIFF"), is of majority age, a citizen and resident of Delaware County, Oklahoma.

2. That to the best information, belief and knowledge of Plaintiff, at all times material hereto, the individual identified as Defendant, ROSEANN C. LOWERY (hereinafter referred to as, "LOWERY," or "DEFENDANT"), is believed to be of majority age, a citizen, of Noel, Missouri. Lowery is a person regularly engaged in the occupation and/or enterprise of selling used cars to members of the public in several states, including, the Plaintiff, a resident of Oklahoma. It is unknown whether Lowery sells vehicles under a Used Car Dealers license issued in Missouri or Oklahoma or Arkansas.

3. That to the best information, belief and knowledge of Plaintiff, at all times material hereto, the Defendant, the Progressive Insurance Company (PROGRESSIVE), is a foreign insurance company, registered and authorized to do business in Oklahoma and Missouri, operating

through its authorized agent and/or agency, the Cornerstone Insurance agency (CORNERSTONE) located in Southwest City, Missouri.

4. Plaintiff purchased a 2006 Buick Rendezvous VIN #3G5DB03L56S509608 (MV), 'in good working condition," from Lowery on November 5, 2013, for the agreed selling price of \$3,000.00, for her personal use and operation in the State of Oklahoma. The MV had previously been titled in the state of Missouri to Roseann C. Lowery, bearing a Missouri license tag No. CF8C2W.

5. Pursuant to the purchase agreement, Plaintiff on 11/05/2013, went to the Cornerstone Insurance agency (CORNERSTONE) located in Southwest City, Missouri, and purchase a Full coverage policy of insurance (Policy No. 901932836), underwritten by the Progressive Insurance Company (PROGRESSIVE) , issued to Julie Kier, which insurance coverage was effective commencing 11/05/2013 through 05/05/2014. The insurance coverage for Ms. Kier and her 2006 Buick Rendezvous VIN #3G5DB03L56S509608, was in full force and effect at all times material hereto. No lien was shown or indicated against the subject MV relating to Progressive's insurance coverage.

6. Ms. Kier being of native American decacy, registered and titled the subject, 2006 Buick Rendezvous VIN #3G5DB03L56S509608, with the Cherokee Nation Tag Agency located in Jay, OK; Title No. 237387 A.

7. Subsequent to the sale and purchase agreement, and Plaintiff taking possession of the subject, 2006 Buick Rendezvous VIN #3G5DB03L56S509608 (MV), Plaintiff learned that the transmission of the subject 2006 Buick Rendezvous was defective or faulty and/or needed to be repaired and/or replaced. When plaintiff told the Defendant Lowery, about the defective transmission, Defendant Lowery told the Plaintiff that her brother had had an accident in the MV, and she said she would have the transmission taken care of. The transmission was never fixed or replaced by Defendant Lowery while Plaintiff had possession of the subject MV

8. Sometime later on or about December 17, 2013 the vehicle was involved in a single car accident colliding with a deer at or about 4835 St. Highway 20, near Spavinaw, OK, and a claim ensued, which resulted in the subject, 2006 Buick Rendezvous VIN #3G5DB03L56S509608 (MV), being towed to a vehicle storage and impound station approved by Progressive, in

Jay, OK. The subject, 2006 Buick Rendezvous was declared a total loss. The loss value after deducting Ms. Kier's \$500.00 deductible was set at \$3,058.87.

9. On or about 01/14/2014, without confirming or checking with or providing notice to, their insured, the Plaintiff, Julie Kier, a representative of Defendant, Progressive, and the assigned claims adjustor, Theresa Morice, approved and authorized the subject, 2006 Buick Rendezvous to be released from the impound lot in Jay, OK and delivered to the possession of the Defendant, Lowery.

10. The release and delivery of possession of the subject 2006 Buick Rendezvous by the Progressive adjustor Morice, without confirming or checking the veracity of statements made by Lowery, was contrary to Kier's possession and use of the subject MV, and not in the best interests of Progressive's insured, Julie Kier.

11. The Defendant Progressive, again without confirming, checking with or providing notice to their insured, the Plaintiff, Julie Kier, paid the full value of the loss to the Defendant Lowery, in derogation of the rights and title of their insured, Julie Kier, in and to the subject, 2006 Buick Rendezvous VIN #3G5DB03L56S509608, and/or the claim loss value, and/or the salvage value thereof.

12. The Defendant Progressive further failed or neglected to issue a "Salvage Title" for the subject, 2006 Buick Rendezvous VIN #3G5DB03L56S509608, containing Ms. Kier's Cherokee Nation 2013-2014 license tag.

13. After suborning Progressive into releasing the subject, 2006 Buick Rendezvous to her, Defendant Lowery refused to surrender to the Plaintiff, on request for possession of the subject MV, or of her Cherokee Nation 2013-2014 license tag, and various other items of personal property, including, her car and house keys, a key fob, containing pictures of Ms. Kier's children and family members, and other personal items, which were stowed in the MV at the time of the collision with the deer and subsequent removal to the Jay, OK impound lot. The personal items have never been returned to the Plaintiff, Julie Kier, by the Defendant Lowery, and are held contrary to Plaintiff's right of use and possession thereof.

### **FIRST CAUSE OF ACTION**

The Plaintiff adopts, merges and incorporates herein in its entirety, the previous allegations Numbered 1 through 13, and further avers:

14. The Defendant Lowery has breach the parties' sales contract in claiming post-accident possession of the subject, 2006 Buick Rendezvous VIN #3G5DB03L56S509608, and denying to the Plaintiff, her rightful possession and use thereof; each and all such acts to Plaintiff's economic detriment and damages in an amount in excess of TEN THOUSAND (\$10,000.00) DOLLARS.

### **SECOND CAUSE OF ACTION**

15. The Defendant Lowery has converted Plaintiff's rightful possession of the subject, 2006 Buick Rendezvous VIN #3G5DB03L56S509608, MV, or of her Cherokee Nation 2013-2014 license tag, and various other items of personal property, including, her car and house keys, a key fob, containing pictures of Ms. Kier's children and family members, and other personal items, which were stowed in the MV at the time of the collision with the deer and subsequent removal to the Jay, OK impound lot; each and all such acts to Plaintiff's economic detriment and damages in an amount in excess of TEN THOUSAND (\$10,000.00) DOLLARS.

### **THIRD CAUSE OF ACTION**

15. The Defendant Lowery breached the expressed warranty of merchantability of the subject, 2006 Buick Rendezvous VIN #3G5DB03L56S509608, when she stated it was in "good working condition" and failed to inform the Plaintiff that: 1) her brother had had a wreck in the care, and 2) the subject MV had a bad, defective, and/or faulty transmission which need repair or replacement; each and all such acts to Plaintiff's economic detriment and damages in an amount in excess of TEN THOUSAND (\$10,000.00) DOLLARS.

### **FOURTH CAUSE OF ACTION**

16. The Plaintiff is entitled to punitive damages in an amount TEN THOUSAND

(\$10,000.00) DOLLARS due from and arising for the intentional and egregious actions of Defendant Lowery in converted her possession of the subject, 2006 Buick Rendezvous VIN #3G5DB03L56S509608, and of her Cherokee Nation 2013-2014 license tag, and various other items of personal property, including, her car and house keys, a key fob, containing pictures of Ms. Kier's children and family members, and other personal items, which were stowed in the MV at the time of the collision with the deer and subsequent removal to the Jay, OK impound lot; each and all such acts to Plaintiff's economic detriment and damages in an amount in excess of TEN THOUSAND (\$10,000.00) DOLLARS.

#### **FIFTH CAUSE OF ACTION**

17. The Defendant, Progressive, breached its insurance contract with the Plaintiff, insured, Julie Kier, by its actions above complained of herein; each and all such acts to Plaintiff's economic detriment and damages in an amount in excess of TEN THOUSAND (\$10,000.00) DOLLARS.

#### **SIXTH CAUSE OF ACTION**

18. The Defendant, Progressive, breached and violated its duty of good faith and fair dealing with its insured, Julie Kier, by its actions above complained of herein, specifically, failing to notify, or confirm with Plaintiff, Julie Kier, its insured, the statement and allegations or averments of the Defendant Lowery of and concerning her lien rights, if any, in and to the subject, 2006 Buick Rendezvous VIN #3G5DB03L56S509608, and of her Cherokee Nation 2013-2014 license tag, and various other items of personal property, including, her car and house keys, a key fob, containing pictures of Ms. Kier's children and family members, and other personal items, which were stowed in the MV at the time of the collision with the deer and subsequent removal to the Jay, OK impound lot; each and all such acts to Plaintiff's economic detriment and damages in an amount in excess of TEN THOUSAND (\$10,000.00) DOLLARS.


#### **SEVENTH CAUSE OF ACTION**

19. The actions of the Defendant, Progressive, in its breach and violation of its duty of

good faith and fair dealing with its insured, Julie Kier, by its actions above complained of herein, specifically, failing to notify, or confirm with Plaintiff, Julie Kier, its insured, the statement and allegations or averments of the Defendant Lowery of and concerning her lien rights, if any, in and to the subject, 2006 Buick Rendezvous VIN #3G5DB03L56S509608, and of her Cherokee Nation 2013-2014 license tag, and various other items of personal property, and in paying to Defendant Lowery the total claim loss proceeds, and possession of the subject, 2006 Buick Rendezvous, including, therein, Plaintiff's personal property without first notifying or checking with its insured, Julie Kier to confirm the veracity of Defendant's Lowery's rights, if any, and/or claims for possession of the subject, 2006 Buick Rendezvous, and her personal property contained therein; which such actions were knowingly made, or failed to confirm and verify, intentional and so egregious as to warrant punitive damages for each and all such acts to Plaintiff's economic detriment and damages in an amount in excess of TEN THOUSAND (\$10,000.00) DOLLARS.

WHEREFORE, Plaintiff, JULIE KIER, prays for judgment against the Defendants, ROSEANN C. LOWERY, and The PROGRESSIVE INSURANCE COMPANY, as plead and the above referenced allegations and causes of action for negligent, failure to act, and/or intentional actions in breach of their respective contracts, of sale, express and implied warranty, and of good faith and fair dealing with the Plaintiff, Julie Kier, CAROLYN in an amount in excess of TEN THOUSAND (\$10,000.00) Dollars, for each stated cause of action, for punitive damages of and for acts of conversion, bad faith dealings; statutory pre and post-judgment interests thereon; cost of future recovery actions of Plaintiff's possession of the subject, 2006 Buick Rendezvous, and her personal property contained therein; costs to repair or replace the defective or faulty transmission; expenses and costs, incurred herein, including a reasonable attorney's fee for the benefit of counsel; such further relief to which the Plaintiff is entitled by law or equity; and such other and further relief which the Court deems just and proper in the premises.

Respectfully submitted,

  
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